U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-G-

DATE: OCT. 25, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a physician specializing in pulmonology and critical care, seeks classification as a member of the professions holding an advanced degree. *See* section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The Petitioner also seeks a national interest waiver of the job offer requirement that is normally attached to this employment-based second preference immigrant classification. *See* section 203(b)(2)(B)(i) of the Act, 8 U.S.C. § 1153(b)(2)(B)(i). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director, Texas Service Center, denied the petition. He found that the Petitioner did not establish that a waiver of the job offer requirement is in the national interest. Specifically, the Director concluded that the Petitioner had not demonstrated the necessary influence in the field.

The matter is now before us on appeal. The Petitioner argues that her original research "distinguish[es] her from the vast majority of critical care specialist[s] who do not conduct research but limit their work to the clinical setting."

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate his or her qualification for the underlying visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification normally requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –

> (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of Job Offer –
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> (i) National interest waiver. . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.[1]

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise...." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Matter of New York State Dep't of Transp., 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must demonstrate that he or she seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that he or she will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, a petitioner's assurance that he or she will, in the future, serve the national interest cannot suffice to establish prospective national benefit. *Id.* at 219. Rather, a petitioner must justify projections of future benefit to the national interest by establishing a history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

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[1] Pursuant to section 1517 of the Homeland Security Act of 2002 ("HSA"), Pub. L. No. 107-296, 116 Stat. 2135, 2311 (codified at 6 U.S.C. § 557 (2012)), any reference to the Attorney General in a provision of the Act describing functions that were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA "shall be deemed to refer to the Secretary" of Homeland Security. *See also* 6 U.S.C. § 542 note (2012); 8 U.S.C. § 1551 note (2012).

II. ANALYSIS

At the time of filing, the Petitioner was a pulmonary critical care fellow,[2] and the record reflects that she has performed research focusing on pulmonary diseases and disorders. Upon review of the entire record, the evidence establishes that she is a member of the professions holding an advanced degree and that her work is in an area of substantial intrinsic merit. Regarding the second prong of the *NYSDOT* analytical framework, the Director correctly found that the proposed benefits of providing patient care would not be national in scope. The Petitioner, however, also submitted sufficient documentation to demonstrate that the proposed benefits of her pulmonary research are national in scope. Therefore, the Director's finding on that issue is withdrawn. It remains, then, to determine whether the Petitioner's past record of achievement is sufficient to meet *NYSDOT*'s third prong.

Documentation supporting the Form I-140, Immigrant Petition for Alien Worker, included evidence regarding the Petitioner's academic and professional credentials, reference letters, poster presentations, and publications. After reviewing the materials offered in response to his notice of intent to deny, the Director denied the petition, finding that the record did not establish the Petitioner's impact on the field. For the reasons discussed below, the submitted evidence does not establish that her work has influenced the field as a whole as required under the third prong of the *NYSDOT* analysis. Without such a showing, employment in a beneficial occupation does not, by itself, qualify the Petitioner for the national interest waiver.

Most of the submitted reference letters praise the Petitioner's clinical skills and indicate that her original research has the potential to impact the field, but not that it already has. For example, a professor at and states that she "has reached a level of uncommon expertise in her field." discusses a study of patients with pulmonary hypertension in which the Petitioner found "that reduced corrected diffusing capacity could have other diagnostic value," and indicates this finding has provided "the foundation for further studies to be done on this topic."

Some of the letters include general statements that the Petitioner's work has influenced the field. a professor at indicates that the Petitioner "has had a profoundly influential impact through her original contributions." a professor at states that he is "confident thousands of patients have benefitted from" her research on pulmonary hypertension and that her findings "undoubtedly changed the way many physicians approach similar cases throughout the country." According to an assistant professor at the he is "well-aware of her research and ha[s] utilized its applications frequently in my own

[2] We note that on appeal, the Petitioner expresses her concern that the Director incorrectly referred to her as a "plastic surgeon" on the third page of his decision. However, a review of the record indicates that this was a typographical error and that the Director understood the Petitioner's correct occupation.

practice." an assistant professor at writes that he has "sent several patients for specialty services" as a result of the Petitioner's data. While we acknowledge that her research studies have value, not every physician who performs original research that adds to the general pool of knowledge in the field inherently serves the national interest to an extent that is sufficient to waive the job offer requirement. The Petitioner did not provide sufficient evidence to support statements that her research findings have been widely implemented in clinical practice or have otherwise had a degree of influence on the field as a whole. Unsupported statements are of limited probative value and are not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The Director noted that multiple letters reference the The decision quotes a letter from from who wrote that the Petitioner "contributed to truly groundbreaking research in our profession that was published in the As stated by the Director, however, "the record contains a single page document," which was "identified as a 'poster discussion,' not as a published scholarly article," and that the "document lists the name of seven authors, and the petitioner is not one of these authors." The record also contains a printout of emails from one of the listed authors, but does not establish the Petitioner's contributions to the project. She did not address this issue on appeal.

Regarding the Petitioner's remaining publications and presentations, they demonstrate that the Petitioner's research findings were shared with others and may be acknowledged as original based on their selection to be presented or published. They do not, however, establish that those findings have had an impact on the field as a whole. The record does not contain evidence showing that her work has been widely cited or otherwise considered influential in her field.

The Petitioner also contends that her background, skills, and experience make her especially well qualified for the position relative to other workers. Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor through the labor certification process. *See NYSDOT*, 22 I&N Dec. at 221.

III. CONCLUSION

A plain reading of the statute indicates that it was not the intent of Congress that every advanced degree professional or individual of exceptional ability should be exempt from the requirement of a job offer based on national interest. For the reasons discussed above, we find the record insufficient to confirm that the Petitioner's past record of achievement is at a level sufficient to waive the job offer requirement which, by law, attaches to the visa classification sought. Accordingly, the Petitioner has not established by a preponderance of the evidence that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

For the above reasons, the Petitioner has not met its burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

ORDER: The appeal is dismissed.

Cite as *Matter of A-G-*, ID# 11767 (AAO Oct. 25, 2016)